

82-1638

NO.

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CLERK

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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1982

OSWELL M. BRADLEY ~~et. al.,~~  
PETITIONERS

v.

J. A. SEGAL, et. al.,  
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

OSWELL M. BRADLEY  
P. O. Box 5084  
RICHMOND, VIRGINIA 23220

### ASSIGNMENT OF ERROR

1. The trial court erred in denying appellants' motion to transfer the case to equity.

2. The trial court erred in sustaining respondents' pleas of release and res  
judicata.

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TABLE OF CITATIONS

Flowers vs. Virginia Ry. Co., 135 Va.  
367, 116 S.E. 672(1923)

Stallard vs. Atlantic Greyhound Lines,  
169 Va. 223, 192 S.E. 800(1927)

STATUTES

Code of Virginia, 1950, as amended, §8.01-  
270

Rules of the Supreme Court of Virginia,  
Rule 3:12

VIRGINIA

IN THE SUPREME COURT

OSWELL M. BRADLEY, et. al.,

Appellants,

vs.

J. A. SEGAL, et. al.,

Appellees.

PETITION FOR APPEAL

THE HONORABLE CHIEF JUSTICE AND THE  
JUSTICES OF THE SUPREME COURT OF THE  
UNITED STATES.

STATEMENT OF THE CASE

On or about March 7, 1975, appellants  
herein, filed a suit in equity<sup>1</sup> naming as  
defendants, the instant appellants and  
others. On or about March 20, 1975,  
appellants and appellees entered into a  
"release" which appellants claim was and  
is invalid for reasons of fraud, duress,  
and coercion. On April 10, 1975, the  
Circuit Court of the City of Richmond  
dismissed appellant Bill of Complaint,  
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1 Chancery No. D-8131

with prejudice because of the execution of the release by appellants.

In 1980, appellants, proceeding "pro se" filed a motion for judgment against appellees and other for breach of contract, and a breach of fiduciary duties. These acts complained of arose out of the same facts which precipitated the 1975 suit. On October 3, 1980, appellees filed special pleas of the statute of limitations, release and res judicata.

Subsequent to a hearing on appellees motions which was held on September 1, 1981, the trial Court entered an Order on September 28, 1981 sustaining the Special Pleas of Res Judicata and Release. Petitioner moved the trial court to suspend its final Order of September 28, 1981 in order to afford petitioner the necessary time to file additional motions. On October 20,

1981 the trial court entered an Order suspending its' Order of September 28, 1981.

Thereafter, appellants filed a motion for leave to transfer the case to the equity side of the court pursuant to §8.01-270 of the Code of Virginia, 1950, as amended, and to file an appropriate Bill of Complaint reflecting the proceedings in equity.

Appellant's Bill of Complaint, which was transmitted along the Motion for Leave to Transfer along which revealed that appellants, by proceeding pro se, had erred in setting forth their cause of action, and that it was determined that the release was obtained via fraud, duress and coercion, as set forth in the proposed Bill of Complaint.

On November 30, 1981, the trial court denied the motion to transfer the

case to equity and sustained its earlier opinion dismissing the original motion for judgment upon the basis of release and res judicata.

#### ASSIGNMENT OF ERROR

1. The trial court erred in denying appellants' motion to transfer the case to equity.

2. The trial court erred in sustaining respondents' pleas of release and res judicata.

#### ARGUMENT

##### A

The trial court erred in denying appellants' motion to transfer the case to equity.

Section 8.01-270 of the Code of Virginia, 1950, as amended provides in pertinent part:

No case shall be dismissed simply because it was brought on the wrong side of the court, but whenever it shall appear that a plaintiff has

proceeded at law when he should have proceeded in equity..the court shall direct a transfer to the proper forum, and shall order such change in for amendment of, the pleadings as may be necessary to conform them to proper practice.....

The language of the statute leaves no room for discretion when it appears that a plaintiff has proceeded at law rather than in equity. Under such circumstances the trial court must transfer the case and order such changes in the pleadings as may be necessary.

In the case at bar, the trial court was presented with sufficient facts to enable it to determine that the suit had been brought on the wrong side of the court. The trial court not only knew that appellants had proceeded "pro se" when they filed their motion for judgment, but was also aware that appellants' cause of action was of an equitable nature, viz, unjust enrichment, and not breach of

contract as alleged by appellants in their original pro se Motion for Judgment.

Equipped with this knowledge, the trial court clearly erred in not transferring the case, all in violation of the mandates of §8.01-270.

B

The trial court erred in sustaining appellees' pleas of release and res judicata.

The existence of a release, in and of itself, is not grounds for the dismissal of a suit when such release challenged upon the basis of fraud, duress and coercion. In fact, proof of any of the above serves to invalidate the release. The issue of whether or not a release is procured by fraud, etc... is one of fact. Flowers vs. Virginia Ry Co., 135 Va. 367, 116 S.E. 672 (1923); Stallard vs. Atlantic

Greyhound Lines, 169 Va. 223, 192 S.E.  
800 (1937).

Thus, the trial court erred in dismissing the suit upon the basis of release without allowing appellants the opportunity to challenge the validity of the release.

It is no argument to say that appellants could have anticipated the special pleas and thereby set forth facts in her motion for judgment in anticipation thereof. There is no authority in Virginia which requires that matters tending to invalidate a release be pleaded in anticipation of the defense. Nor is there authority for the proposition that the plea of release be met by a reply or other pleading unless the plea expressly requests a reply, Rule 3:12 of the Rules of the Supreme Court of Virginia.

Appellees' plea in the instant action  
requested no reply.

## VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on Tuesday the 21st day of September, 1982.*

Oswell M. Bradley, et al.,

Appellants,

against

Record No. 820387

Circuit Court No. LD-1265/81-2800

J. A. Segal, et al.,

Appellees.

From the Circuit Court of the City of Richmond, Division I

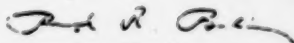
Finding no reversible error in the judgment complained of,  
the court refuses the petition for appeal filed in the above-styled  
case.

A Copy,

Teste:

Allen L. Lucy, Clerk

By:



Deputy Clerk

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 15th day of October, 1982.*

Oswell M. Bradley, et al.,

Appellants,

against

Record No. 820387

Circuit Court No. LD-1265/81-2800

J. A. Segal, et al.,

Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 21st day of September, 1982, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Testes:

*Allen L. Lacy*  
Clerk

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I  
September 28, 1981

OSWELL M. BRADLEY,  
CAROL L. BRADLEY  
AND  
LAFAYETTE, INC.,

Plaintiffs

v.

J. A. SEGAL,  
BERNARD G. MEYER, JR.  
AND  
RICHARD S. ROTHENBERG,

Defendants

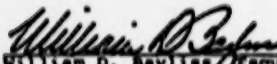
CASE NO. ID-1265

FINAL ORDER


This day came the defendants, J. A. Segal, Bernard G. Meyer, Jr. and Richard S. Rothenberg, by their respective counsel, upon their joint motions to dismiss the Motion for Judgment filed herein, and after hearing argument of counsel for the defendants and the plaintiffs, the Court being of the opinion that the Motions to Dismiss should be sustained upon the basis of the Special Pleas of Res Judicata and Release filed by the defendants, it is

ORDERED that the Motion for Judgment filed by the plaintiffs be dismissed for the reasons herein.

We ask for this:

  
William D. Bayless, Esquire  
Counsel for Bernard G. Meyer, Jr.  
and Richard S. Rothenberg

A Copy.

Filed:  Clerk

1.  D.C.

81-2383

### CONCLUSION

Since the language of the transfer statute is mandatory and not discretionary, the trial court erred in failing to transfer the case to equity after it appeared that appellants' cause of action was equitable in nature and appellants filed the appropriate motion to have the case transferred.

Since the mere existence of a release is not an affirmative defense when the validity of the release is challenged upon the basis of fraud, duress and/or coercion, the trial court erred in dismissing appellants' Motion for Judgment because of the existence of a release.

Respectfully submitted,

By Oswell M. Bradley  
:pro se

Oswell M. Bradley, et al.

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of March, 1983, a true and accurate copy of the foregoing Petition for Appeal was mailed to William D. Bayliss, Esquire, BROWDER, RUSSELL, MORRIS & BUTCHER, 1200 Ross Building, Richmond, Virginia 23219; and J. W. Keigh, Jr., Esquire, P. O. Box 8945, Richmond, Virginia 23225.

By Oswell M. Bradley

CERTIFICATE OF COMPLIANCE WITH

RULE 5:22

I certify the following:

(a) The appellants in this Petition for Appeal are Oswell M. Bradley, et al. The name of the appellees are: J. A. Segal, represented J. W. Keith, Jr., Esquire, P. O. Box 8945, Richmond, Virginia; Bernard G. Myer, Jr. and Richard S.

Rothenberg represented by William D.  
Bayliss, Esquire, 1200 Ross Building,  
Richmond, Virginia 23219.

By Oswell M. Bradley